

ANGELIKA BORMANN ET AL.
USSN 09/557,376
REPLY TO OFFICE ACTION DATED MAY 27, 2003
AMENDMENT OF NOVEMBER 28, 2003

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

Applicants have replaced the previous claims with a new set of claims. For the Examiner's information, Applicants point out that the new claims correspond to the previous claims as follows:

New Claim

30, 46

Previous Claim

10 (Malic, lactic, citric and tartaric acids are

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supported by the specification at page 5, lines 25-
27; salicylic acid by page 6, lines 18-19; and
glycolic acid by Example 9 on page 22)

| | |
|--------|----------------|
| 31, 47 | 14 |
| 32, 48 | 16 |
| 33, 49 | 20 |
| 34, 50 | 17 |
| 35, 51 | 21 |
| 36, 52 | 18 |
| 37, 53 | 22 |
| 38, 54 | 23 |
| 39, 55 | 24 |
| 40, 56 | New; see above |
| 41, 57 | 26 |
| 42, 58 | 27 |
| 43, 59 | 25 |
| 44, 60 | New; see above |
| 45, 61 | New; see above |

Applicants do not believe any new matter is introduced by this amendment.

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Claims 10-12, 14, 16-18, 20-24, 27 and 28 were rejected under 35 USC § 102(e) as being anticipated by Bimczok et al. ("Bimczok"), U.S. Patent No. 5,961,999. The Examiner concedes that Bimczok teaches the application of his composition to *wrinkled skin*, but the Examiner takes the position that wrinkles are blemishes. In response, Applicants point out that new claims 30-45 require application to *acned skin*, and there is no teaching or suggestion that Bimczok's compositions are applied to such skin. Further, although new claims 46-61 still require application to blemished skin, the blemished skin must be "*blemished due to a bacterial secondary infection*." There is nothing of record to teach or suggestion that wrinkled skin inherently meets this criteria. Consequently, Applicants submit that the new claims are not, in fact, anticipated by Bimczok. An early notice to this effect is earnestly solicited.

Claims 25 and 26 were rejected under 35 USC § 103(a) as being obvious over Bimczok. In response, Applicants point out that this rejection was premised on Bimczok anticipating the basic features of the present invention. Indeed, in this rejection, the Examiner merely took the additional position that Bimczok having exemplified the use of citric acid made obvious the substitution therefor of lactic or tartaric acid. However, Applicants have explained above why Bimczok does not, in fact, anticipate the present claims. Accordingly, this rejection should also be overcome. Even if the Examiner is correct that Bimczok made obvious the substitution of

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lactic or tartaric acid for the exemplified citric acid, such substitution still would not achieve the present invention because the prior art composition still would not have been either expressly or inherently applied to acned skin or to skin blemished due to a bacterial secondary infection. Therefore, Applicants seek an early notice that this rejection has been reconsidered and withdrawn as well.

Finally, claims 10-12, 14, 16-18, 20-24, 28 and 29 were rejected under 35 USC § 103(a) as being obvious over Traupe et al. ("Traupe"), U.S. Patent No. 5,759,584, in view of Zocchi, U.S. Patent No. 5,683,972. The Examiner takes the position that Traupe teaches that alpha-hydroxy acids are "*the* main constituents" of wool wax acids. Clearly, this is not true since Traupe expressly teaches at column 2, lines 59 ff, that saturated, *unsubstituted* carboxylic acids comprise about 60% of wool wax acids, and alpha-hydroxy acids only about 30% wool wax acids. Consequently, a person having ordinary skill in the art, given Traupe, is wholly left without any reasonable expectation that the topical application of alpha-hydroxy acids would be successful in treating acned skin or skin blemished due to a bacterial secondary infection. Zocchi does not remedy this defect in Traupe, and, indeed, is relied upon by the Examiner only to show that the addition of polyglyceryl methylglucose distearate to Traupe's composition would have been obvious. Consequently, the combination of Traupe and Zocchi does not, in fact, make out a *prima facie* case of the obviousness of the previous claims, let alone the new claims.

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The new claims require hydroxycarboxylic acids that do not fall within any of the groups (a)-(i) at columns 1-2 of Traupe. In this regard, Applicants emphasize that "n" in these groupings, according to column 2, line 43, has a value of 7-31, which means that Traupe expressly teaches that the hydroxycarboxylic acid constituents of wool wax acid are the higher acids. There is no teaching or suggestion in Traupe of the use of malic acid, lactic acid, citric acid, tartaric acid, salicylic acid, or glycolic acid as an active ingredient effective against acned skin or skin blemished due to bacterial secondary infection. As indicated, Zocchi is cited only to teach the obviousness of adding polyglyceryl methylglucose distearate to Traupe's composition. Consequently, again, the combination of Traupe and Zocchi does not, in fact, make out a *prima facie* case of the obviousness of the new claims.

In view of the foregoing, Applicants respectfully request that the Examiner reconsider and withdraw this rejection as well. An early notice that this rejection has been reconsidered and withdrawn is earnestly solicited.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance.

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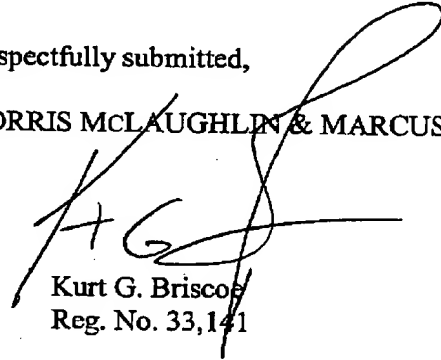
However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By


Kurt G. Briscoe
Reg. No. 33,141

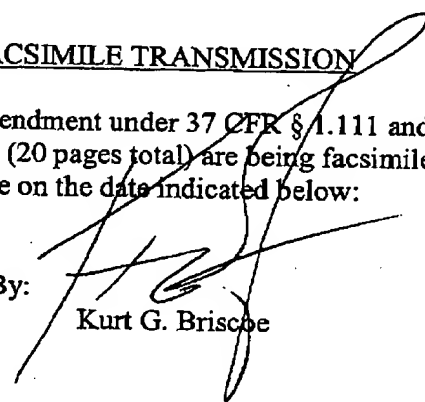
220 East 42nd Street
30th Floor
New York, New York 10017
Phone: (212) 808-0700
Fax: (212) 808-0844

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Amendment under 37 CFR § 1.111 and the accompanying Petition for Extension of Time (20 pages total) are being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

Date: November 28, 2003

By:


Kurt G. Briscoe